

Below is the Order of the Court.




Marc Barreca
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

FISHING VESSEL OWNERS MARINE WAYS,
INC.,

Debtor.

Lead Case No. 19-13502

(Jointly Administered with Case No. 19-13504)

In re

SEATTLE MACHINE WORKS

Debtor.

ORDER CONFIRMING DEBTORS'
FIRST AMENDED JOINT PLAN OF
REORGANIZATION

THIS MATTER came before the Court at a hearing held on September 24, 2020 (the "Confirmation Hearing"), for the Court's consideration of the *Debtors' First Amended Joint Plan of Reorganization* [Dkt No. 216] (the "Plan"). The Court, having reviewed the files and records herein, including any objections to confirmation of the Plan, and deeming itself fully advised, finds and concludes as follows:

ORDER CONFIRMING DEBTORS' FIRST AMENDED
JOINT PLAN OF REORGANIZATION – Page 1

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1 A. Notice of the Confirmation Hearing was given in accordance with applicable rules and
2 procedures, and this matter is now properly before the Court.

3 B. The Court has jurisdiction over the parties and the matters before it and is vested with
4 authority to make the within findings of fact and conclusions of law, and to otherwise enter this Order.

5 C. On July 27, 2020, the debtors each filed an amended petition, electing to seek relief
6 under Subchapter V of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1181-1195 (the “Election”).

7 D. On July 28, 2020, the debtors filed their *Notice of Filing of Amended Petitions*
8 [Dkt No. 211]. Pursuant to Bankruptcy Rule 1020(b), the U.S. Trustee or a party in interest had a
9 period of thirty (30) days to file an objection to the debtors’ Election.

10 E. No objection was filed to the Election.

11 F. The Election is appropriate and effective pursuant to Fed. R. Bankr. P. 1009(a) and
12 Interim Fed. R. Bankr. P. 1020, and in accordance with the decisions in *In re Progressive Solutions,*
13 *Inc.*, 2020 Bankr. LEXIS 467 (Bankr. C.D. Calif. 2020); *In re Body Transit, Inc.*, Case No. 20-10014
14 (Bankr. E.D. Pa, March 24, 2020; *In re Samha Foods, Co., LLC*, Case No. 19-80424 (Bankr D. Ne,
15 March 31, 2020; *In re Moore Props. Of Person Cty., LLC*, 2020 Bankr. LEXIS 550 (Bankr. M.D.N.C.
16 2020); *In re Bello*, 2020 Bankr. LEXIS 813 (Bankr. E.D. Mich. 2020); *In re Ventura*, No. 8-18-
17 77193-reg, 2020 Bankr. LEXIS 985 (Bankr. E.D.N.Y. Apr. 10, 2020); *In re Twin Pines, LLC*, 2020
18 Bankr. LEXIS 1217 (Bankr. D.N.M. Apr. 30, 2020).

19 G. Each of Classes 1, 2, 3, 5 and 6 has voted to accept the Plan. Classes 7 and 8 are equity
20 classes comprised only of insiders. Class 4 has voted to accept the Plan conditioned on Section
21 IV.C.4.b of the Plan being modified to replace \$2,000.00” with \$2,500.00.”.

22 H. The debtors and the Plan comply with all the requirements of § 1129(a), other than
23 § 1129(a)(8).

1 I. The Plan complies with and satisfies § 1191(b), as the Plan does not discriminate
2 unfairly, and is fair and equitable, with respect to the holder of the claim in Class 4.

3 J. The Plan complies with and satisfies §§ 1129(b)(2)(A) and 1191(c)(1) with respect to
4 the claims in Classes 1 and 2, as the holder of the claims in such classes has voted to approve the Plan,
5 and shall retain its liens against property of the debtors and shall be paid in full.

6 K. The Plan complies with and satisfies § 1191(c)(2)(A) as of the Effective Date, as it
7 provides that all of the debtors' projected disposable income during the four-year term of the Plan will
8 be applied to make payments under the Plan.

9 L. There is a reasonable likelihood that the debtors will be able to make all payments
10 under the Plan, and the Plan provides for appropriate remedies to protect holders of claims in the event
11 that the payments are not made. The Plan provides that creditors shall have the right to seek any
12 remedies available to them under applicable law in the event the debtors are unable to cure a default
13 following the expiration of any applicable cure period.

14 Now, therefore, based on the foregoing, it is hereby

15 ORDERED as follows:

16 1. The Plan [Dkt No. 216] is hereby approved and confirmed pursuant to the terms of this
17 Order.

18 2. Page 6, line 20 of the Plan is hereby amended to add "is" following the first reference
19 to SMW.

20 3. Section IV.C.1.f of the Plan is hereby amended to add the following at the end of that
21 section: " , provided that such interest rate shall not be less than 6.50%".

22 4. Section IV.C.4.b of the Plan is hereby modified to replace "\$2,000.00" with "\$2,500.00."
23

1 5. Section VI.A of the Plan is hereby amended to add a new sentence at the end of such
2 section: “Notwithstanding anything to the contrary in this Plan, the Debtors shall continue to comply
3 with all terms and conditions of each Collective Bargaining Agreement to which either remains a
4 party, including all financial obligations to all pension funds under said Collective Bargaining
5 Agreements.

6 6. Section II.B.7 is hereby amended to state that the Subchapter V trustee was appointed
7 on July 28, 2020.

8 7. Pursuant to Bankruptcy Code § 1194(b), the debtors shall make all payments required
9 under the Plan.

10 8. The Subchapter V trustee’s appointment shall terminate upon substantial
11 consummation of the Plan. Upon that event, the debtors shall file an electronic notice so advising
12 parties.

13 9. Article XI of the Plan is hereby deleted and replaced with the following:

14 Except as specifically provided in this Plan or in the Confirmation Order, the distribution
15 made to the various classes of creditors as provided for in this Plan shall be in full and
16 complete satisfaction of their Allowed Claims and Allowed Interests. Except as
17 specifically provided in this Plan or the Confirmation Order, Confirmation shall operate,
18 effective as of the Effective Date, as a discharge of any and all debts and Claims as
19 defined in § 101(5) of the Bankruptcy Code against the Estate, the Debtors or Debtors-in-
20 Possession that arose at any time prior to Confirmation (the “Discharge”). The Discharge
21 shall be effective as to each and every Claim, regardless of whether or not (a) the Claim
22 was scheduled, (b) a Proof of Claim was filed, (c) the Claim is an Allowed Claim, or (d)
23 the holder thereof voted to accept the Plan.

10 10. The stay pursuant to Rule 3020(e) is hereby lifted and does not apply and confirmation
20 can be effected immediately.

21 // /End of Order/ //

1 Presented by:

2 BUSH KORNFELD LLP

3
4 By /s/ James L. Day
James L. Day, WSBA #20474
5 Attorneys for Debtors
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